CF0000058221

ST 417/93

6-12 94

(2)

Jail
P. R.-2006-88

APPEAL OF PRISONER

No. 1473/94 Name [illegible]

Father's name [illegible]

Residence [illegible] Age [illegible]

Sentenced [illegible] on 6/12/1994

Under section 302 I.P.C. by [illegible]

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement 6/12/94

2 Date of which copy received 20/12/94

3 Date on which Appeal sent 12/94

4 whether the prisoner wishes to be represented or not – Yes / No

No. 1473/94 Name [illegible]

Continued in [illegible] Jail [illegible]

No. 42 /Cert. Dated 1994 12/1/95

Forward to the CHIEF JUDICIAL MAGISTRATE [illegible]

gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

अधीक्षक,
केन्द्रीय जेल रायपुर, (म.प्र.)
Superintendent

Date of receipt in C. J. M's office

Date of receipt record to accompany

Memo of Appeal of the Appeliate court

No

Forwarded to the

High Court of Madhya Pradesh
JABALPUR
Reg. No. 46
Dated 18 JAN 1995 198
Recept Clerk
High Court, Jabalpur

C. J. Magistrate

Date of receipt in Appeliate Court

(P. T. O.)

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(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cri. A. No. 828/95 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Satish K. Agnihotri, JJ.

25-7-2006

Mr. M.P.S.Bhatia, counsel for the appellant.
Mr. Sudhir Bajpai, Deputy Government Advocate for the respondent/State.

Arguments heard.

Oral judgment dictated on Dais.

Per L.C.Bhadoo, J. :

1. By this appeal under Section 374(2) of the Code of Criminal Procedure sent through Superintendent, Central Jail, Raipur, the accused/appellant Biselal has questioned the legality and correctness of judgment of conviction and order of sentence dated 6-12-1994 passed by Ist Additional Sessions Judge, Durg in Sessions Trial No.417/1993, whereby the learned Ist Additional Sessions Judge, after holding the accused/appellant guilty for commission of the offence under Section 302 of the Indian Penal Code, has sentenced him to undergo imprisonment for life.

2. Brief facts leading to filing of this appeal are that on 30-3-1993 at about 1 P.M., P.W.-4, Shatruhan lodged a report at Police Station Deori that on that day in the morning at about 8 A.M., he went to his agricultural field for the purpose of cutting wood and when at about 11 A.M., after cutting the wood, he was returning to his residence, he saw that few villagers were standing at his residence. He went inside his house. He saw that his sister-in-law Samundbai was lying upturn and blood was

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मामला क्रमांक Cri. A. No. 828/95 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

oozing out of her back, clothes were drenched with blood, the blood was present on the ground also. In the room, his sisters, namely, Lachhwantinbai and Kantabai were sitting and in other room, his elder brother Biselal was present. After seeing this, he informed the villagers and went to the Police Station, lodged the report, which was entered in the Rojnamcha. After reaching the place of occurrence, the merg intimation, Ex.P-6 and P-10 were recorded by Police. Dehati Nalisi, Ex.P-7 was also recorded and based on that, First Information Report, Ex.P-11 was registered. The Investigating Officer, after giving notice of Ex.P-1 to the Panchas, prepared the Panchnama of the dead body of Samundbai. The dead body of Samundbai was sent for post mortem examination to Primary Health Centre, Daundilohara under Ex.P-9A, where P.W.-7, Dr. D.R.Dhurve conducted the post mortem and prepared the post mortem report, Ex.P-13, in which he opined that the death was due to shock resulting from multiple injuries. The Investigating Officer took into possession the axe, pieces of broken bangles, plain soil, blood stained soil and kathari under Ex.P.-3 and P-4. The recovered articles were sent for chemical examination. The site plan was prepared by the Investigating Officer and after completion of the investigation, charge-sheet was filed in the Court of Judicial Magistrate First Class, Balod, who, in turn, committed the case to the Sessions Judge, Durg, from where the learned Ist Additional Sessions Judge received the case on transfer for trial.

3. The prosecution, in order to establish the charge against the accused, examined 7 witnesses. On the other hand, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure, in which he denied the material appearing in the prosecution

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evidence against him and stated that he is innocent and he has been falsely implicated in the crime in question. The learned Additional Sessions Judge, after hearing the Additional Public Prosecutor for the State and counsel for the accused, convicted and sentenced the accused as mentioned in paragraph 1 of this judgment.

4. We have heard Mr. M.P.S. Bhatia, learned counsel for the accused/appellant and Mr. Sudhir Bajpai, learned Deputy Government Advocate for the respondent/State.

5. As far as the question of homicidal death of Samundbai is concerned, the same has not been disputed by learned counsel for the accused/appellant. Even otherwise from the evidence of the eye-witnesses P.W.-2, Lachhwantinbai and P.W.-3, Kantabai, who are the sisters of the accused/appellant, and from the evidence of P.W.-7, Dr. D.R.Dhurve, who conducted the post mortem on the body of Samundbai and has stated that on 31-3-1993, he conducted the post mortem on the body of Samundbai and found that there were 6 incised wounds and who has opined that the cause of death was shock as a result of excessive bleeding, it is established that the death of Samundbai was homicidal in nature.

6. As far as the involvement of the accused/appellant in committing the crime in question is concerned, P.W.-2, Lachhwantinbai has stated that on the fateful day at about 10 to 11 A.M., she was at the house of her parents. At that time, her sister-in-law Samundbai (since deceased) was sleeping in the room, the accused came, after picking-up an axe, he

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —4—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

entered the room where Samundbai was sleeping and he committed her murder with the axe and after that, he left the room. Thereafter, she informed in the neighbourhood. Similar is the evidence of P.W.-3, Kantabai, who is also the sister of the accused/appellant. She has stated that on the fateful day, she along with Lachhwantinbai and Samundbai returned after digging soil. She along with Lachhwantinbai were in one room of the house, whereas Samundbai was sleeping in the other room. At that time, the accused came there and after picking-up an axe, he entered the room of Samundbai and murdered her. When they went towards that room, the accused/appellant threatened them and chased them carrying the axe in his hand, therefore, they did not enter where the body of Samundbai was lying. Therefore, from the above evidence of P.W.-2, Lachhwantinbai and P.W.-3, Kantabai, who are the real sisters of the accused, their presence on the spot cannot be doubted. They have categorically stated that the accused entered the room of Samundbai with axe and there he murdered her, therefore, from these ocular evidence of P.W.-2, Lachhwantinbai and P.W.-3, Kantabai, it is established that the accused has committed the crime in question.

7. Learned counsel for the accused/appellant argued that at the time of commission of the crime in question, the accused was of unsound mind, therefore, he was not able to understand about his act that what he was doing was contrary to law. While referring the evidence of P.W.-3, Kantabai and P.W.-4, Shatruhan, learned counsel for the accused/appellant submitted that from their evidence, it is established that the accused was suffering from insanity, as such he is entitled for the protection of Section 84 of the Indian Penal Code.

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मामला क्रमांक Cri. A. No. 828/95 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

8. In order to appreciate the arguments advanced by learned counsel for the appellant, we have perused the evidence as also the relevant provisions. Section 84 of the Indian Penal Code envisages that –

> "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

Section 105 of the Indian Evidence Act envisages that –

> "When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exception in the Indian Penal Code (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."

The provisions of Section 84 of the Indian Penal Code read with Section 105 of the Indian Evidence Act came-up for consideration before the Hon'ble Apex Court in the matter of **Dahyabhai vs. State of Gujarat, reported in 1964(7) SCR 361** and the Hon'ble Apex Court held that –

> "..... Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court may raise a reasonable doubt in the mind of the court as regards one or

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मामला क्रमांक Cri. A. No. 828/95 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged. The burden of proof on the accused to prove the insanity is no higher than that rests upon a party to civil proceedings, which, in other words, means preponderance of probabilities.....

The Court further held that doctrine of burden of proof in the context of plea of insanity may be stated in the following words :

(1) the prosecution must prove beyond reasonable doubt that the accused had committed the offence with the requisite mens rea and the burden of proving that always rests on the prosecution from the beginning to the end of the trial.

(2) there is a rebuttable presumption that the accused was not insane, when he committed the crime, in the sense laid down by S.84 of the Penal Code: the accused may rebut it by placing before the court all the relevant evidence – oral, documentary or circumstantial, but the burden of proof upon him is no higher than that rests upon a party to civil proceedings:

(3) Even if the accused was not able to establish conclusively that he was insane at the time he committed the offence, the evidence placed before the Court may raise a reasonable doubt in the mind of the court as regards one or more of the ingredients of the offence, including mens rea of the accused and in that case the court would be entitled to acquit the accused on the ground that the general burden of proof resting on the prosecution was not discharged."

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मामला क्रमांक Cri. A. No. 828/95 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9. Therefore, the prosecution, in a case of homicide, shall prove beyond reasonable doubt that the accused caused death with the requisite intention described in Section 299 of the Indian Penal Code. This general burden never shifts and it always rests on the prosecution. But, under Section 105 of the Indian Evidence Act the burden of proving the existence of circumstances bringing the case within the said exception lies on the accused, and the Court shall presume the absence of such circumstances. The accused has to rebut the presumption that such circumstances did not exist, by placing material before the Court sufficient to make it consider the existence of such circumstances so probable that a prudent man would act upon them. The accused has to satisfy the standard of a 'prudent man'. If the material placed before the Court, such as, oral and documentary evidence, presumptions, admissions or even the prosecution evidence, satisfies the test of 'prudent man' the accused have discharged his burden.

10. Based on the above principle, if we look into the evidence of the present case, the only circumstance the counsel for the accused/appellant has been able to brought on record in the cross-examination of P.W.-3, Kantabai that her brother was little like a mad man. Before the incident, he became like a mad man and the villagers were knowing about his mental condition, but at that time when this witness was being cross-examined, the accused *suo motu* stated in the Court that Sir, on the one side he has not committed the murder and he was having sickle in his hand. His wife threw him with such a force that he fell down and became unconscious. After hearing this from the accused, when P.W.-3, Kantabai was asked whether it was so happened, then the witness stated that she

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

did not see this fact. P.W.-4, Shatruhan, who is the brother of the accused/appellant, has stated in the cross-examination that 2 to 4 months prior to the incident, the accused became mad and a report to that effect was lodged in the Police Station Deori. His uncle Ramprasad and Village Kotwar Jagdish lodged a report in the Police Station, but the Police did not act upon the report. But, at the time of the incident, the accused was not suffering from the madness. To some extent, he became alright. Again P.W.-4, Shatruhan said that on the date of incident, the mental condition of the accused was not perfect. Now the question is whether on the basis of the material which came in the cross-examination of P.W.-3, Kantabai and P.W.-4, Shatruhan, who are closely related to the accused/appellant, it can be termed that the accused has discharged his burden in the light of the above judgment of the Hon'ble Apex Court.

11. Considering the overall prosecution evidence and other material, we are of the considered opinion that the accused has not been able to discharge his burden for the reasons that in the first instance, no copy of the report lodged in the Police Station Deori by the uncle and the Village Kotwar has been produced in this case. Nor any documentary evidence showing that at any point of time the accused was treated in the hospital. P.W.-6, B.L.Negi, the Investigating Officer in his cross-examination in paragraph 12 has categorically stated that the witnesses had not disclosed to him that the accused was suffering from the madness at the time of the incident and he is not aware if 3–4 months before the incident, the uncle of the accused and Village Kotwar had lodged any report regarding the madness of the accused nor after filing of the charge-sheet any application was moved by the counsel for the accused getting the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —9—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused medically examined. Therefore, in our opinion, the accused has not been able to discharge his burden. Merely on the statements of the brother and sisters of the accused in cross-examination, it cannot be held that the accused was suffering from madness at the time of commission of the crime.

12. In the result, the arguments advanced by learned counsel for the accused/appellant are devoid of merit. The manner in which the accused assaulted the deceased with axe and looking to the nature of the injuries caused on the vital part of the body, the intention of the accused to commit murder of Samundbai was writ large. Therefore, we do not find any infirmity in the judgment of the trial Court and the appeal is liable to be dismissed and is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Satish K. Agnihotri
Judge

Gopal

P.T.O.

26.9.00